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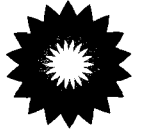
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DEPT. OF TRANSPORTATION  
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May 4, 2004

Docket Management Facility  
U.S. Department of Transportation  
400 Seventh Street, S.W., Rm. PL-401  
Washington, D.C. 20590

Re: Vessel Documentation (Lease Financing for Vessels  
Engaged in the Coastwise Trade; Second Rulemaking);  
Docket USCG-2003-14472; Docket MARAD-2003-15171 -24

Ladies and Gentlemen: 24

BP p.l.c. offers the following comments on the subject notices pertaining to proposed regulation of time charters of certain lease-financed vessels by the U.S. Coast Guard and the U.S. Maritime Administration and to a proposed limitation on the "grandfather" provisions (the "Joint Notice") contained in the Final Rule issued on February 4, 2004 in Coast Guard Docket No. USCG-2001-8825 (the "Final Rule").

BP p.l.c. ("BP"), a company that is registered in, and organized under, the laws of the United Kingdom and Wales, is the ultimate parent of the BP Group, a group of hundreds of affiliated companies doing business in over 100 countries. The BP Group has an enormous presence in the United States.

In the United States, the BP Group:

- is the largest producer of oil and natural gas;
- has approximately 45,000 employees;
- is one of the largest traders of energy, encompassing oil, natural gas power and natural gas liquids;
- has more than 15,500 BP, Amoco and ARCO branded service stations;
- is the largest purchaser of ethanol (more than 20% of the market); and
- sells about 64 million gallons of fuel daily.

With respect to the United States maritime industry, the BP Group:

- has time chartered up to 11 tankers operated by the Alaska Tanker Company, LLC ("ATC") for delivery of Alaska North Slope crude oil to West Coast ports and Hawaii, estimated to involve about 190 voyages this year, delivering about 144 million barrels to U.S. refineries and providing employment for about 500 U.S. seagoing and 40 shore-based personnel;
- is having built by NASSCO four 185,000 DWT crude oil tank vessels (to be operated by ATC and time chartered by BP) for the Alaska trade at a total cost of about \$1 billion, providing employment for about 1,000 NASSCO employees over the life of the contract;
- charters U.S.-flag tank vessels and barges to carry over 50 million barrels of petroleum products and chemicals on the U.S. Atlantic, Gulf and West Coasts and on the inland waterways of the United States; and
- pays over \$275 million annually to U.S. carriers for freight and charter hire.

The vessels utilized by the BP Group in the United States are operated by numerous third party shipping and tug/barge companies that are qualified pursuant to section 2 of the Shipping Act, 1916 ("Section 2") to engage in the U.S. coastwise trade, including ATC, Bouchard Transportation Company, Crowley Maritime Corporation, Higman Towing Company, Keystone Shipping Company, Kirby Marine Transport Corporation and OSG Ship Management. BP companies obtain these transportation services via time charters, voyage charters, contracts of affreightment and similar contracts ("Use Charters").

Some of the vessels utilized by the BP Group are owned by BP affiliates and documented pursuant to 46 U.S.C. § 12106(e) (the "Lease Finance Provision"). Those vessels have been issued coastwise endorsements by the U.S. Coast Guard under the Lease Finance Provision at various points in time since 1998. In addition, the BP Group has ordered tank vessels from NASSCO and structured its financing of the construction of those vessels on the premise that an affiliate will own those tank vessels when delivered pursuant to 46 U.S.C. § 12106(e). Both the vessels that are owned by BP Group affiliates and the vessels under construction at NASSCO appear on schedules to Capital Construction Fund Agreements between two BP Group affiliates and the U.S. Maritime Administration. Therefore, the Joint Notice and the Final Rule are of vital interest to the BP Group.

In addition, because BP companies are not eligible under U.S. citizenship laws to operate U.S.-flag vessels in the coastwise trade, the Use Charters it employs are generally subject to section 9 of the Shipping Act, 1916 ("Section 9") and would have to be approved on a case-by-case basis by the U.S. Maritime Administration ("MARAD") but for the general approval contained in the MARAD regulation issued in 1992 (46 C.F.R. § 221.13(a)) (the "General Approval"). That 1992-issued regulation reversed prior MARAD policy in which MARAD reviewed Use Charters one at a time prior to their entry into force. BP was therefore concerned when MARAD requested comments on August 2, 2002 (the "MARAD Request") whether to re-examine the General Approval.

For these reasons, the BP Group has submitted comments in the Final Rule rulemaking process on August 31, 2001 and October 8, 2002 and to MARAD's Request on October 3, 2002. BP hereby incorporates those comments by reference.

**I. Comment to U.S. Coast Guard Proposal.**

The U.S. Coast Guard has made three proposals: (a) to prohibit or restrict time charters of foreign lease-financed vessels; (b) to limit the "grandfather" provision contained in the Final Rule to three years from the date of the Final Rule; and (c) establish a process of third-party review of lease finance vessel documentation. BP submits the following comments to these proposals.

**A. Time Charter Prohibition/Restriction.**

**1. Overall Comment.**

The Lease Finance Provision permits indirect non-citizen ownership of a coastwise-qualified vessel that is demise chartered for at least three years to a coastwise eligible U.S. citizen. Therefore, by its plain terms, the Lease Finance Provision ensures U.S. citizen control both because the vessel owner must be a U.S. citizen eligible to document a U.S.-flag vessel and the vessel operator must be a U.S. citizen eligible to operate a U.S.-flag vessel in the U.S. coastwise trade.

The Coast Guard indicates that "control of the vessel may be affected by a charter-back from the demise charterer to the owner, the owner's parent, or to a subsidiary or affiliate of the parent," "we believe that the intent of Congress would be frustrated if charter-back arrangements were not prohibited or at least restricted," and that the intent of Congress was "to adhere as closely as possible to Jones Act principles."

We respectfully disagree. A genuine Use Charter between an affiliate of the vessel owner and the vessel operator cannot wrest back the control ceded to the vessel operator by the vessel owner in a genuine demise charter. Otherwise the demise charter would not effect a transfer of control, and the Use Charter would, contrary to its "Use" essence, effect such a transfer.

It is noteworthy that Use Charters of Jones Act-qualified vessels are permitted by law today as they were when the Lease Finance Provision was enacted. The only potential restriction on Use Charters is contained in Section 9, and that Section grants MARAD authority to review and approve charters for national security reasons, not for Jones Act-compliance reasons. Therefore, we respectfully submit that the Coast Guard is incorrect as a matter of law when it indicates that "charter-back arrangements" would frustrate Congressional intent. Congress is presumed to know the law when it acts. And since Use Charters were permitted and are permitted, they cannot "frustrate" Congressional intent since Congress must, as a matter of law, have anticipated their employment with foreign lease-financed vessels.

Finally, the Coast Guard refers to "Jones Act principles" without identifying those principles. The "Jones Act" restricts the transportation of merchandise in the U.S. coastwise trade only to "a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States." Use Charters do not affect, much less undermine, these

requirements. Each vessel owned by a BP affiliate is built in the United States and U.S. documented. The Lease Finance Provision expressly permits non-citizen ownership of a person that is qualified to document a vessel in the United States. Therefore, the U.S. ownership requirement is also satisfied regardless of how the vessel is utilized.

For the foregoing reasons, and for the reasons stated in BP's comments incorporated by reference, BP urges the Coast Guard to reconsider and withdraw its proposal to prohibit or restrict Use Charters of foreign lease-financed vessels. At a minimum, the Coast Guard should not adopt an outright prohibition, but rather, concentrate its efforts on establishing criteria to ensure that the demise charter effects a true demise of the vessel and that any Use Charter does not effect a demise, and review such Use Charters on a case-by-case basis.

## **2. BP's Specific Suggestions.**

In the event that the Coast Guard proceeds with its proposal to restrict or prohibit Use Charters, BP recommends certain changes to the proposed rule principally relating to the carriage of proprietary cargo. Even where the Coast Guard has proposed prohibiting Use Charters of foreign lease-financed vessels in its Alternative 2, it has recognized that the carriage of "proprietary cargo" presents no concerns vis-a vis the Jones Act. BP agrees with this recognition and urges the Coast Guard to retain a proprietary cargo exception in any rule that may be adopted.

BP has a strong interest in the proprietary cargo provision because the vessels it owns pursuant to the Lease Finance Provision are predominantly engaged in the carriage of cargo owned by a member of the BP Group and all of those vessels are the subject of "charter-back" arrangements. Those vessels are not, however, exclusively engaged in the transportation of such proprietary cargoes. For example, it is the nature of the oil transportation business that cargoes may be swapped, even in mid-voyage, between unaffiliated entities to respond to refinery needs and the vicissitudes of the consumer market. Furthermore, they might transport cargoes not owned by any member of the BP Group as part of a vessel pooling or vessel sharing arrangement. For these reasons, BP recommends that if either Alternative 1 or Alternative 2 in the Joint Notice are adopted, that the Coast Guard insert the concept of "predominantly engaged in carrying proprietary cargo" and include definitions of "predominantly engaged" and "proprietary cargo" as suggested in the attachment to this comment.

Included in the suggested definition of "proprietary cargo" is an exclusion for large tank vessels delivered after December 31, 1999 that are reasonably likely to transport unrefined petroleum or liquefied natural gas from Alaska to the Continental United States. The purpose of this provision is ensure that Use Charter restrictions do not unintentionally harm the State of Alaska and to provide sufficient flexibility to ensure adequate tonnage for the transportation of crude oil and the potential transportation of liquefied natural gas.

It is also possible that unforeseen circumstances may arise that would make it difficult for a person relying on the proprietary cargo exception to make reasonably effective use of foreign lease financed vessels. For example, if the Trans-Alaska Pipeline were disrupted for some reason for an extended period of time, vessels constructed to transport Alaska crude oil might be

effectively idled with serious negative financial consequences for the vessels' owners, operators and charterers. To address such unforeseen situations, BP suggests that the Coast Guard adopt a waiver provision and has suggested language in the attachment to this comment.

The consequences to BP of not adopting a reasonable definition of proprietary cargoes as suggested in this comment would be significant and adverse. BP has invested and is investing hundreds of millions of dollars in vessels in reliance upon the Lease Finance Provision as written by Congress and prior Coast Guard interpretations, none of which prohibited Use Charters in the lease finance context. BP therefore placed its reasonable reliance upon the law and prior Coast Guard interpretations and should the Coast Guard not adopt its suggestions regarding proprietary cargoes, the Coast Guard should "grandfather" Use Charters entered into, or planned in reasonable reliance on, those interpretations.

**B. Grandfather Changes.**

In the Final Rule, the Coast Guard adopted two "grandfather" provisions relating to vessels issued coastwise endorsements under the Lease Finance Provision. One "grandfathers" vessels issued such endorsements prior to February 4, 2004 so long as the Certificate of Documentation is not exchanged, deleted or cancelled under enumerated circumstances. The second "grandfathers" vessels constructed pursuant to a construction contract entered into before February 4, 2004 "in reliance on a letter ruling from the Coast Guard issued before February 4, 2004."

BP appreciates the Coast Guard's recognition of the fact that the requirements applicable to the Lease Finance Provision have changed markedly since October 1996 and that persons, which have relied on the plain language in the Lease Finance Provision and on prior Coast Guard interpretations, should not be required to restructure to achieve compliance with the Final Rule. Under the circumstances, a "grandfather" provision is essential and the only mechanism for sustaining fundamental fairness and avoiding a judicially disfavored retroactive effect.

In the Joint Notice, the Coast Guard has proposed limiting each "grandfather" to three years from either the issuance of the Final Rule (February 4, 2004) or three years from when a newly constructed vessel is delivered. The Coast Guard indicates that three years is "a reasonable amount of time to provide owners with sufficient time to plan and effectuate whatever restructuring is necessary to comply with the regulations."

BP respectfully disagrees. BP has been developing its plans with respect to the construction of tank vessels at NASSCO since at least 1997. Given the size of the project, particularly in comparison to similar foreign-built tank vessel projects, financing is a critical element of the project. In fact, it is no exaggeration to say that the financing package put into place is the difference between the project being undertaken in the first place and is critical to its ultimate success.

BP's financial plans rest on fundamental economic assumptions that derive, in part, from BP's ability to own the vessels and, in part, from BP's participation in the Capital Construction Fund

program, which in turn also rests upon BP's ability to own certain U.S.-flag vessels. Any change to those assumptions has the potential to create serious economic repercussions affecting the viability of the new construction project.

The vessels being constructed at NASSCO have useful lives far exceeding three years. BP's financing plans take this long useful life into account as clearly indicated in its CCF agreements with MARAD. It is not reasonable to expect that three years bears any relation to such a project. It is highly unlikely that a third-party purchaser of the vessels would be willing or able to reflect such anticipated benefits in its purchase price from BP. Therefore, three years is an insufficient amount of time in which to reasonably expect BP to unravel these plans and, more importantly, will result in significant economic harm to BP even if restructuring is successfully accomplished.

BP respectfully suggests that the "grandfather" provision not be limited to three years particularly with respect to vessels delivered pursuant to construction contracts entered into prior to February 4, 2004.<sup>1</sup> BP believes that this reasonable "grandfather" is warranted where there has been reliance on prior Coast Guard interpretations. BP also respectfully suggests that such reliance is evidenced by the inclusion of a vessel on a schedule to a Capital Construction Fund agreement with MARAD that was approved by MARAD prior to February 4, 2004. Therefore, if the Coast Guard proceeds with a limitation on the "grandfather" provisions contained in the Final Rule, BP suggests that the Coast Guard adopt two modifications to the "grandfather" provisions as suggested in the language in the attachment to this comment. These modifications are based on inclusion of vessels in a schedule to a CCF Agreement approved by MARAD prior to February 4, 2004.

### **C. Third-Party Review.**

The Coast Guard has also proposed the possibility of requiring "a certification from an independent auditor with expertise in the business of vessel financing and operations." The stated purpose would be to provide "additional assurance that the transaction in fact qualifies under the lease-financing statute and regulations."

At the outset, BP notes that the Coast Guard has not indicated why the requirement to use an independent auditor should be considered for one narrow area of vessel documentation but not in other areas. Nor has the Coast Guard actually proposed a regulation to implement the possibility of requiring independent auditors -- it merely presents a series of questions.

Of the tens of thousands of commercial vessels documented by Coast Guard, only a small fraction have endorsements issued under the Lease Finance Provision. There is no apparent reason for requiring the extra burden and expense of independent auditors in such a small vessel population without applying it to all commercial vessel documentation. Therefore, BP is opposed to the requirement for an independent auditor at this time pending presentation by the

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<sup>1</sup> BP is especially concerned about the possibility of time charter restrictions, as proposed by both the Coast Guard and MARAD, being imposed and undermining the "grandfather" provisions. Accordingly, should the Coast Guard elect to restrict the grandfather provisions further, BP respectfully urges the Coast Guard to also grandfather pre-existing time charters if time charters are to be restricted or reviewed.

Coast Guard of a reason for requiring such an auditor and pending presentation of a proposed rule implementing such requirement for public comment.

## **II. Comment to MARAD Proposal.**

MARAD is charged with implementing Section 9. As MARAD noted in promulgating the current Section 9 general approval of Use Charters to non-citizens: "The principal basis for section 9 to assure that a U.S.-flag fleet, under U.S. citizen control, is available in time of national emergency."

MARAD has proposed reinstating its case-by-case review of Use Charters in the foreign lease financing context. The basis for this reinstatement identified by MARAD is that the "charter-back scenario" "was not contemplated by MARAD when it promulgated its regulation granting general approval of time charters to non-citizens."

Although this may be technically correct, MARAD does not indicate how such contemplation relates to the purpose of Section 9. The Lease Finance Provision permits indirect foreign beneficial ownership. Vessels with coastwise endorsements issued under the Lease Finance Provision must be owned by U.S. citizens eligible to document a vessel in the United States. Furthermore, they must be demise chartered to a U.S. citizen eligible to own or operate a vessel in the U.S. coastwise trade. The Coast Guard already reviews such demise charters and has developed more rigorous certification requirements applicable to the vessel owner and operator than apply to the issuance of any other coastwise endorsement. Given that the purpose of Section 9 is "to assure that a U.S.-flag fleet, under U.S. citizen control, is available in time of national emergency," it is difficult to conceive how a Use Charter could possibly affect such control under the already very tightly constrained circumstances of foreign lease-financing of vessels predominantly engaged in the transportation of merchandise in U.S. territorial waters. Therefore, BP is opposed to the reinstatement of case-by-case review of Use Charters and respectfully believes that MARAD has failed to state a basis cognizable under Section 9 to reinstate such review.

Should MARAD proceed with such review, BP requests that MARAD promulgate specific criteria for determining which Use Charters will comply and which will not. Among those criteria, BP respectfully suggests that MARAD consider participation in a CCF Agreement with MARAD. As MARAD is aware, MARAD has already reviewed BP's Use Charters in that context and such review should suffice under any proposed rule. BP also requests that reinstatement of MARAD case-by-case review not commence until after the end of the "grandfather" period if the Coast Guard adopts such a limitation. In any event, BP reserves the right to comment on any proposed rule MARAD would have to provide for public comment on the criteria and process for case-by-case review of Use Charters.

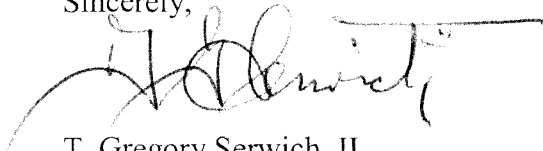
## **III. Conclusion.**

Before concluding, BP wishes to speak briefly of the Final Rule which contains a number of changes to the Supplemental Rule published on August 9, 2002 that were never proposed in the

regulatory process and therefore were never subjected to notice and comment. The lack of an opportunity to comment is significant, in part, because in the opinion of BP neither the Lease Finance Provision nor its legislative history supports inclusion of these requirements. BP is concerned, in particular, about three requirements. First, the Final Rule requires a certification by the vessel owner "[t]hat the vessel is financed with lease financing." The meaning of this is not clear. However, BP urges the Coast Guard to treat vessels included, with the approval of MARAD, in either a CCF Agreement Schedule A or B as being so financed; because such vessels are part of a government sanctioned program of vessel leasing and financing that is scrutinized and approved by the Department of Transportation. Second, one "grandfather" provision is limited to vessels constructed "in reliance on a letter ruling from the Coast Guard issued before February 4, 2004." BP urges the Coast Guard to exercise its discretion to include within the ambit of a "letter ruling" approvals by MARAD relating to vessel construction issued prior to February 4, 2004. Third, the definition of "operation or management of vessels" includes "activities directly associated with controlling the use and employment of the vessel under a time charter or other use agreement." This definition is overly broad and can be construed to prevent entities from documenting vessels pursuant to the lease finance provision merely because they avail themselves of marine transportation services performed by the actual owners and managers of vessels, that is, charterer and shipper activity that heretofore has not been understood to be "operation or management of vessels".

BP appreciates the opportunity to comment on this important subject. BP respectfully suggests that the Coast Guard adopt the changes included in the attachment hereto if it proceeds with its proposed rule. BP also looks forward to working with the Coast Guard and MARAD as the agencies develop rules on the issues of an independent auditor and as to case-by-case review of Use Charters in the Section 9 context.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Gregory Serwich, II', with a long horizontal flourish extending to the right.

T. Gregory Serwich, II

Attachment



May 4, 2004

**Proposed Revisions of BP America, Inc. to Coast Guard Notice of Proposed Rulemaking**

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*"Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade; Second Rulemaking" -- Docket No. USCG-2003-14472*

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**I. "Chartering Back."**

**A. Alternative 1.**

**1. Coast Guard's Proposed Language.**

The Coast Guard has proposed adding the underscored language to the Final Rule issued February 4:

"The ownership of the vessel is primarily a financial investment without the ability and intent to directly or indirectly control the vessel's operations by a person not primarily engaged in the direct operation or management of vessels or by a member of the group of which the owner is a member."

**2. BP Suggested Revision.**

BP suggests the following revision (shown in italics) to 46 C.F.R. § 67.20(a)(6):

"The ownership of the vessel is primarily a financial investment without the ability and intent to directly or indirectly control the vessel's operations by a person not primarily engaged in the direct operation or management of vessels or by a member of the group of which the owner is a member. *A vessel is exempt from this section when it is predominantly engaged in carrying proprietary cargo.*"

BP further suggests adding the following definitions to 46 C.F.R. § 67.3 and a new waiver provision suitably numbered:

*"Predominantly engaged* means at least 70 per centum of the aggregate annual tonnage of all cargo carried by all vessels issued a coastwise endorsement pursuant to 46 U.S.C. 12106(e) owned by the vessel's owner and its U.S. affiliates."

"*Proprietary cargo* means cargo carried by a vessel, which cargo immediately before, during or immediately after such carriage is beneficially owned by the vessel's owner or a person in the vessel owner's group. Cargo shall not be deemed beneficially owned if (i) the aggregate book value of all the vessels owned by the cargo owner and its U.S. affiliates exceed 10 per centum of the aggregate book value of all assets owned by such person and its U.S. affiliates; (ii) more than 10 per centum of the aggregate revenues of the cargo owner and its U.S. affiliates is derived from the ownership, operation, or management of vessels; or (iii) title to the cargo is held for non-commercial reasons and primarily to evade restrictions against non-proprietary cargo shipments. In the case of a vessel pooling or sharing arrangement, cargo that is not beneficially owned by the vessel's owner or a person in the vessel owner's group shall nevertheless be deemed proprietary cargo to the extent that an equal amount of cargo beneficially owned by the vessel's owner or a person in the vessel owner's group is carried in coastwise trade on one or more other vessels not owned by the vessel's owner or a person in the vessel owner's group in such arrangement. All cargo carried on any vessel that is either a self-propelled tank vessel having a length of at least 200 meters or a liquefied natural gas carrier, delivered by its builder after December 31, 1999, and purchased by a person for the purpose, and with the reasonable expectation of transporting proprietary liquefied natural gas or unrefined petroleum from Alaska to the Continental United States, shall be deemed proprietary cargo of the vessel owner."

"*U.S. affiliate* means a person, which has its principal place of business or domicile in the United States, that is directly or indirectly controlled by, under common control with, or controlling another person."

**"67.\_\_\_\_ Waiver of Proprietary Cargo Requirement.** Should circumstances beyond the direct control of the vessel's owner and persons in the vessel owner's group prevent or reasonably threaten to prevent the vessel owner from satisfying the proprietary cargo requirements under § 67.20, the vessel owner may notify the Coast Guard in writing, and upon receipt of such notice and after verifying the existence of such circumstances, the Coast Guard shall waive or modify the proprietary cargo requirement to the extent necessary to permit the vessel to continue to operate in the coastwise trade for a period of time beginning on the date the circumstances began and ending on the date the circumstances end."

**B. Alternative 2.**

**1. Coast Guard's Proposed Language.**

The Coast Guard has proposed adding the underscored language to the Final Rule issued February 4:

"(9) The person that owns the vessel has transferred to a qualified United States citizen under 46 U.S.C. app. 802 full possession, control, and command of a U.S.-built vessel through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter. For purposes of this section, a demise charterer is not considered to be the owner *pro hac vice* when the vessel is subject to a sub-charter to a member of the group of which the vessel's owner is a member, except when the vessel is engaged in carrying cargo owned by the group of which the vessel's owner is a member."

**2. BP Suggested Revision.**

BP suggests the following revision (shown in italics) to 46 C.F.R. § 67.20(a)(9):

"(9) The person that owns the vessel has transferred to a qualified United States citizen under 46 U.S.C. app. 802 full possession, control, and command of a U.S.-built vessel through a demise charter in which the demise charterer is considered the owner *pro hac vice* during the term of the charter. For purposes of this section, a demise charterer is not considered to be the owner *pro hac vice* when the vessel is subject to a sub-charter to a member of the group of which the vessel's owner is a member, except when the vessel is predominantly engaged in carrying *proprietary* cargo ~~owned by the group of which the vessel's owner is a member.~~"

BP further suggests that the definitions and the addition suggested above be utilized with respect to this suggested change.

**II. "Grandfather" Rights Limitations.**

**A. Coast Guard's Proposed Language.**

The Coast Guard has proposed deleting the stricken language and adding the underscored language to the Final Rule issued February 4:

"(b) A vessel under a demise charter that was eligible for, and received, a document with a coastwise endorsement under § 67.19

and 46 U.S.C. 12106(e) before February 4, 2004, may continue to operate under that endorsement ~~on and after that date~~ for 3 years after that date and may renew the document and endorsement during that period if the certificate of documentation is not subject to---"

**B. BP's Proposed Additions.**

BP suggests adding the following new sections, 46 C.F.R. § 67.20(g) & (h):

"(g) A vessel under a demise charter that was eligible for, and received, a document with a coastwise endorsement under § 67.19 and 46 U.S.C. 12106(e) before February 4, 2004, may continue to operate under that endorsement if it was listed on a schedule of a Capital Construction Fund Agreement approved by the U.S. Maritime Administration prior to February 4, 2004."

"(h) A vessel under a demise charter that was constructed under a building contract that was entered into before February 4, 2004 is eligible for documentation with a coastwise endorsement under § 67.19 and 46 U.S.C. 12106(e) if it was listed on a schedule of a Capital Construction Fund Agreement approved by the U.S. Maritime Administration prior to February 4, 2004, and the vessel is delivered after that date."